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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1994

JAMES C. LAYNE,

Petitioner,

v.

WALTER INDUSTRIES, INC. GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Eleventh Circuit and District Court for the Northern District of Alabama err by misconstruing the express and unambiguous terms of an Alabama State Court worker's compensation consent order; and, thereby, misapply the clear provisions of Respondent's long term disability plan so as to deny Petitioner benefits for a period of 5 years? In other words, in a *de novo* review of a denial of benefits under ERISA, should the Court first determine the facts regarding the beneficiary's claim of entitlement to benefits and then apply those facts to the provisions of the benefit Plan; or should the Court first ascertain the provisons of the Plan and then construe the facts concerning the beneficiary to fit a particular Plan provision?

LIST OF PARTIES AND LIST OF PARENT COMPANIES AND SUBSIDIARIES

Pursuant to Rules 14.1(b) and 29.1 of the *Rules of the Supreme Court of the United States,* Petitioner states as follows:

> Petitioner is James C. Layne, Plaintiff/Appellant below.

Respondent is Walter Industries, Inc. Group Benefits Plan for Salaried Employees (hereinafter referred to as the Plan), Defendant/Appellee below. Upon information and belief, Plan is administrered by Walter Industries, Inc., having its principal place of business in Tampa, Florida. Walter Industries, Inc.'s parent company is Hillsboro Holdings Company. Walter Industries, Inc. is the parent company of Jim Walter Resources, Inc.; Jim Walter Computer Services, Inc.; Jim Walter Homes, Inc.; Walter Home Improvement, Inc.; JW Aluminum Company; JW Window Components, Inc.; Best Insurors, Inc.; Black Warrior Methane Corp.; Black Warrior Transmission Corp.; Coast to Coast Advertising, Inc.; Dixie Building Supplies, Inc.; Jefferson Warrior Railroad Company, Inc.; Mid-State Homes, Inc.; Sloss Industries Corp.; Southern Precision Corp.; United Land Corp.; United States Pipe and Foundry Company; and Vestal Manufacturing Co.

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WALTER INDUSTRIES, INC. GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

James C. Layne (hereinafter referred to as Layne), the Petitioner herein, hereby respectfully petitions for the issuance of a Writ of Certiorari to enable this Honorable Court to review the judgment of the United States Court of appeals for the Eleventh Circuit entered on May 16, 1994, summarily affirming the decision of the United States District Court for the Northern District of Alabama entered on September 21, 1993.

OPINIONS BELOW

On September 21, 1993, summary judgment was granted by the United States District Court for the Northern District of Alabama in favor of Walter Industries, Inc., Group Benefit Plan for Salaried Employees (hereinafter referred to as the Plan). A copy of the District Court's Order and Memorandum Opinion is printed as Appendix B hereto.

The United States Court of Appeals for the Eleventh Circuit summarily affirmed the District Court's entry of summary judgment on May 16, 1994. A copy of that summary affirmation is printed as Appendix A hereto.

JURISDICTION

The opinion of the United States Court of Appeals for the Eleventh Circuit summarily affirming the District Court's summary judgment in favor of the Plan was entered on May 16, 1994. This Court has jurisdiction to review this matter pursuant to 28 U.S.C. §§ 1254(1) and 2101(c).

Jurisdiction in the United States Court of Appeals for the Eleventh Circuit was based upon 28 U.S.C. § 1291.

Jurisdiction in the United States District Court for the Northern District of Alabama was based upon 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

STATUTORY PROVISIONS

Sections 502(a)(1)(B) and 502(a)(3) of the *Employee Retirement Income Security Act of 1974* (hereinafter referred to as ERISA), 29 U.S.C. §§ 1132(a)(1)(B) and 1132(a)(3), provide:

* * *

(a) Persons empowered to bring a civil action.

A civil action may be brought –

(1) by a participant or a beneficiary –

* * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

* * *

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan. . . .

* * *

STATEMENT OF THE CASE

Layne initiated the instant cause in the Circuit Court for Tuscaloosa County, Alabama on September 21, 1992. Layne sought relief from a denial of long term disability

benefits (hereinafter sometimes referred to as LTD benefits) under ERISA 29 U.S.C. § 1132. The Plan removed the action to the United States District Court for the Northern District of Alabama on October 23, 1992.

The parties entered into a Joint Stipulation of Facts on July 21, 1993. On August 16, 1993, both Layne and the Plan filed competing Motions for Summary Judgment. District Court Judge U. W. Clemon entered summary judgment in favor of the Plan and against Layne on September 21, 1993. Layne filed a timely Notice of Appeal on September 24, 1993. On May 16, 1994 the United States Court of Appeals for the Eleventh Circuit summarily affirmed the District Court's granting of summary judgment in favor of the Plan.

STATEMENT OF THE FACTS

James C. Layne is a disabled former underground coal miner. He was most recently employed as a foreman at the Jim Walter Resources, Inc.'s (hereinafter referred to as JWR) No. 5 Mine in Tuscaloosa County, Alabama. As a salaried employee, he was afforded certain employee benefits, including long term disability benefits (hereinafter referred to as LTD benefits) under the Respondent Plans that were or 'was' administered by Walter Industries, Inc., an affiliate of JWR.

Mr. Layne last worked for JWR during the Fall of 1989. On September 27, 1989, he suffered a severe injury to his lower back which left him totally and permanently disabled.

Over the next several years, Mr. Layne applied for and was awarded LTD benefits by the Plan. Additionally, he successfully prosecuted an application for Social Security disability benefits. Also, a worker's compensation action was filed by Mr. Layne against JWR in State court.

During the pendency of the worker's compensation litigation, Mr. Layne received LTD benefits from the Plan, Social Security disability benefits, and partial worker's compensation benefits from JWR. The Plan provided for a reduction in LTD benefits for other sources of income such as Social Security and worker's compensation. According to the terms of the Plan, Mr. Layne's LTD benefits were adjusted at various times, depending upon the amounts he received from Social Security and for worker's compensation.

Pursuant to the Alabama Worker's Compensation Act in effect at the time of Mr. Layne's injury, if he was found to be suffering from a permanent **partial** disability, then the maximum worker's compensation benefit would have been $220.00 per week for 300 weeks. § 25-5-68(a) *Code of Alabama (1975)*. In the event, however, that he was found to be suffering from a permanent **total** disability, then he would be entitled to the sum of $357.00 per week **for the remainder of his life**. § 25-5-57(a)(4)(a) *Code of Alabama (1975)*. The Alabama Worker's Compensation Act does not allow a trial judge to award a lump sum benefit absent the express agreement of the parties. § 25-5-57(a)(4)(a) *Code of Alabama (1975)*.

Mr. Layne's worker's compensation case was called for trial on May 26, 1992. At that time the parties stipulated to all relevant facts, except for one issue: the degree

of Mr. Layne's permanent disability. Because of Mr. Layne's applicable average weekly wage, he would have achieved the maximum permanent partial disability benefit ($220.00 per week) with a relatively low percentage of disability. Indeed, that percentage was well below the disability rating advocated by JWR. As such, effectively, the only issue to be determined by the Circuit Court was whether Mr. Layne was suffering from a permanent total or permanent partial disability; in other words, whether there was any sort of work that he could perform. Obviously, there was a tremendous difference in the recovery to which Mr. Layne would be entitled depending on a finding of total (in excess of $700,000.00 based upon his life expectancy) vis-a-vis partial disability (less than $50,000.00, subject to the 300 week limit and the statutory credit for compensation payments previously made).

The worker's compensation case proceeded to trial and testimony was taken all day on May 26th, continuing onto the 27th. During the late afternoon of the 27th, Mr. Layne and JWR arrived at a compromise settlement. The State Court entered an order ratifying the settlement on June 5, 1992. Appendix D. It is important to note that counsel for Mr. Layne and JWR signed the order noting their approval of the form of the language contained therein. Mr. Layne was represented by his present counsel in the worker's compensation action. JWR was represented by one of the law firms that represented the Plan before the District Court in the instant cause.

In pertinent part, the compromised settlement order provided as follows:

1. That the Defendant shall pay the Plaintiff through his counsel of record the sum of $110,000.00 in two installments as follows: (i) $55,000.00 to be paid within 30 days of May 27, 1992; (ii) $55,000.00 to be paid within 13 months of May 27, 1992.

2. The Defendant shall take all steps necessary to forgive and release the Plaintiff from the Plaintiff's balance outstanding and owing to Defendant's Long-Term Disability Insurance carrier as of May 27, 1992. The parties have agreed that the approximate amount of such indebtedness is $12,000.00 to $13,000.00. Any payments received by Defendant's carrier after May 27, 1992, shall be refunded to Plaintiff.

. . . .

4. The sums paid and forgiven hereunder as compensation benefits, after reduction of attorney's fees and the expenses incurred, leaves a balance of $102,535.40. **The sums to be paid under this settlement** shall be paid without commutation [or] interest and **shall represent the compromise agreement that the employee's life expectancy is 1,912.56 weeks forward from May 27, 1992,** pursuant to the mortality tables accepted by the Superintendent of Insurance and published by the Secretary of State in the bound volume of the Acts of Alabama, pursuant to Section 35-16-3 Code of Alabama (1975), which such tables were published at pages 1586 and 1587 of the Acts of Alabama, Regular Session – 1990. **Thus, the settlement herein reached represents the payment of, to-wit: $53.61 per week over the 1,912.56 week period of life expectancy of the Plaintiff.**

(Appendix D) (emphasis added).

By letter dated July 20, 1992, a representative of the Plan's Administrator wrote Mr. Layne's counsel, in pertinent part as follows:

> Since Mr. Layne received a lump sum Workmen's Compensation claim settlement, . . . [The Plan] . . . will prorate the amount of the settlement over a sixty month period. Due to the proration of this sum, no benefits will be due Mr. Layne until 60 months after the date of [the trial court's] Order.
>
> It is my understanding the only effect of the court order and Workmen's Compensation settlement was to forgive Mr. Layne's outstanding overpayment to the Plan.

Mr. Layne's counsel then exhausted his administrative remedies by requesting a review of the denial of benefits by the Plan Administrator. By letter dated August 11, 1992, the Plan's Administrator denied Mr. Layne any relief. The instant action ensued.

ARGUMENT

Petitioner respectfully suggests that this Honorable Court should issue a Writ of Certiorari to enable this Court to review the judgment of the Eleventh Circuit and the Northern District of Alabama because the decisions of those Courts have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision, as anticipated by Rule 10.1(a), *Rules of the Supreme Court*. Further, the decision of the instant case by this Honorable Court would provide guidance in the construction and

application of employee benefit plans under ERISA, which is an important question of federal law, which should be settled by this Court as anticipated by Rule 10.1(c), *Rules of the Supreme Court.*

This case presents an issue akin to: "which came first, the chicken or the egg?" In other words, in the course of a *de novo* of a denial of benefits under ERISA, should the Court first determine the facts regarding the beneficiary's claim of entitlement to benefits and then apply those facts to the provisions of the benefit Plan; or should the Court first ascertain the provisions of the Plan and then construe the facts concerning the beneficiary to fit a particular Plan provision?

Petitioner respectfully suggests that the primary focus should first be upon the facts of the circumstances between the parties, e.g., the construction, interpretation and application of the terms of the Worker's Compensation Settlement Consent Order, which should then be applied to the provisions of the LTD Plan. To do otherwise, would be irrational, arbitrary and capricious and concomitant to putting the "cart before the horse." The LTD Plan provisions are meaningless without reference to fact. Indeed, different Plan provisions exist to provide guidance to the Plan Administrator for different fact situations. For example, the parties have always agreed that if Mr. Layne's total worker's compensation benefits from the settlement order are divided by 60 months, he will be ineligible for LTD benefits for a 5-year period of time. However, the parties further have agreed that if his benefits are construed in accordance with paragraph 4 of the Settlement Consent Order (applying the $53.61 per week rate language), Mr. Layne is entitled to LTD benefits

during the 5-year period in question. (See Appendix C, par. 12, at 11).

Without first determining the import of the worker's Compensation Settlement Consent Order, neither the Plan Administrator nor the court undertaking a *de novo* review can apply the LTD Plan provisions, because there are no facts to which to apply the provisions of the LTD Plan. The District Court misdirected its focus away from the facts and upon the language of the Plan, which Layne has never disputed. Only after determining the relevant facts, should one then review the language of the LTD Plan to determine which provisions apply.

Although the District Court's Memorandum Opinion sets out the pertinent portions of paragraph 4 of the Worker's Compensation Settlement Order, Judge Clemon clearly erroneously ignored the express provisions of the consent order by concluding that, under the terms of the Plan, Layne had received worker's compensation benefits in a lump sum, which rendered him ineligible for LTD benefits from June 1992 through May 1997.

It is uncontroverted that JWR paid Layne worker's compensation benefits in accordance with the provisions of paragraph 1 of the consent order, e.g., in two installments in June of 1992 and June of 1993. However, in light of the express construction provisions of paragraph 4 of the Settlement Order, and the terms and conditions of the Plan, the primary focus of the review of the propriety of the Plan Administrator's action and, in turn, Judge Clemon's order, is upon which portion of the Worker's Compensation Consent Order is to be applied. In other words, were the Plan Administrator and Judge Clemon

correct in only applying paragraph 1 of the consent order and ignoring the explicit provisions of paragraph 4 to the effect that the settlement represented and was to be construed as payments of $53.61 per week during Layne's life expectancy? Petitioner respectfully suggests that for the reasons set out herein below, the specific language of paragraph 4 is due to be applied to the Plan and Mr. Layne is thus entitled to LTD benefits for the 60-month period of time from June 1992 to May 1997.

The actions of the Plan Administrator are due to be reviewed *de novo. Firestone Tire and Rubber Company v. Bruch,* 489 U.S. 101 (1989); *Luby v. Teamsters Health, Welfare and Pension Trust Funds,* 944 F.2d 1176 (3rd Cir. 1991); *Reinking v. Philadelphia American Life Insurance Company,* 910 F.2d 1210 (4th Cir. 1990); *Petrilli v. Drechsel,* 910 F.2d 1441 (7th Cir. 1990); *Brewer v. Lincoln National Life Insurance Company,* 921 F.2d 150 (8th Cir. 1990); *Kunin v. Benefit Trust Life Insurance Company,* 910 F.2d 534 (9th Cir. 1990), *cert. denied,* 111 S.Ct. 581 (December 10, 1990); and *Brown v. Blue Cross and Blue Shield of Alabama,* 898 F.2d 1556 (11th Cir. 1990). Indeed, the Doctrine of *contra proferentum* is applicable. *Hansen v. Continental Insurance Company,* 940 F.2d 971 (5th Cir. 1991); *Wickman v. Northwestern Insurance Company,* 908 F.2d 1077 (1st Cir. 1990); *Marsella v. Blue Cross and Blue Shield of Connecticut,* 1991 U.S. App. Lexis 12803 (2nd Cir. 1991); *Kunin v. Benefit Trust Life Insurance Company, supra.* In ERISA cases, construction of terms should be accorded their ordinary, and not specialized meanings. *Brewer v. Lincoln National Life Insurance Company, supra.* Benefit plans are to be liberally construed in

favor of the policyholder or beneficiary and strictly construed against the Insuror. *Wickman v. Northwestern Insurance Company, supra.*

As Professor Stein has noted, ERISA's purpose is to protect the interests of employees and benefit plans, 29 U.S.C. 1001(b), and judicial analysis of benefit entitlement questions is appropriately done by applying ordinary contract interpretation and principles of equity. Stein, *ERISA and the Limits of Equity,* 56 Law and Contemporary Problems 71 (Winter 1993). ERISA should be liberally construed, *Rettig v. Pension Benefit Guaranty Corporation,* 744 F.2d 133 (D.C. Cir. 1984), in favor of employee benefit plan participants; *Smith v. CMTA-IAM Pension Trust,* 746 F.2d 587 (9th Cir. 1984); *Folz v. Marriott Corporation,* 594 F. Supp. 1007 (W.D. Mo. 1984); *Marshall v. Kelly,* 465 F. Supp. 341 (W.D. Ok. 1978); *Western Washington Cement Masons Health and Security Trust Funds v. Hillis Homes, Inc.,* 612 P.2d 436 (Wa. App. 1980), and their beneficiaries; *Donovan v. Daugherty,* 550 F. Supp. 390 (S.D.Ala. 1982); *Bostic v. Ohio River Company Basic Pension Plan,* 517 F. Supp. 627 (S.D. W.Va. 1981).

As previously stated, Petitioner respectfully suggests that the primary focus of the inquiry into the case at bar should be upon the provisions of paragraph 4 of the Worker's Compensation Consent Order. District Judge Anderson of the United States District Court of South Carolina has noted the following:

> A judgment which is clear and unambiguous must be given its plain meaning and consequent legal effect. It may not be collaterally attacked under the guise of "construction." In construing the judgment, general rules

> for the construction of written instruments are applicable. *Gurley v. Lindsley*, 459 F.2d 268 (5th Cir. 1972). Thus, if the judgment is clear and unambiguous, this Court must adopt, and give effect to, the plain meaning of the judgment.

Spearman v. J & S Farms, Inc., 755 F. Supp. 137 (D.S.C. 1990).

As we are dealing with an Alabama Worker's Compensation Settlement Order, it is appropriate to review Alabama law concerning judgments. Judgments are to be construed like other written instruments. *Moore v. Graham*, 590 So.2d 293 (Ala. Civ. App. 1991). The rules applicable to the construction and interpretation of judgments are those applicable to the construction and interpretation of contracts. *Hanson v. Hearn*, 521 So.2d 953 (Ala. 1988). The legal effect of a judgment must be determined in light of the literal meaning of the language used. *Wise v. Watson*, 263 So.2d 681 (Ala. 1970). Separate provisions of judgments, like provisions of contract should be construed *in pari materia*, and the entire judgment should be read as a whole. *Moore v. Graham, supra.* **When the terms of a judgment are not ambiguous, they should be given their usual and ordinary meaning.** *Moore v. Graham, supra; Garrett v. Garrett*, 521 So.2d 1337 (Ala. Civ. App. 1988); *McClure v. Cassady*, 426 So.2d 430 (Ala. Civ. App. 1982).

Language in a judgment that the parties have consented or agreed to is, in the absence of fraud, conclusive of the fact recited and imports absolute verity. *McKinley v. Mckinley*, 172 So.2d 35 (Ala. 1965). It is important to note, again, that the Worker's Compensation settlement Order adopted and ratified a compromise

agreement between Mr. Layne and JWR, as evidenced by the approval of the language of the order by the attorneys of record.

It is appropriate to liken the instant case to other types of consent decrees. This Court has stated that "since consent decrees and orders have many of the attributes of ordinary contracts, they should be construed basically as contracts." *U.S. v. ITT Continental Baking Company*, 420 U.S. 223, 236 (1975). Of settlement agreements, in particular, this Court has said that:

> [T]he agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation. Thus the decree itself cannot be said to have a purpose; rather the parties have purposes; generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it.

U.S. v. Armour and Company, 402 U.S. 673 (1971).

It is clear from the "four corners" of the Worker's Compensation Consent Order that the parties had Mr. Layne's LTD benefits in mind when they fashioned the compromise settlement. Paragraph 2 expressly refers to the forgiveness of in excess of $12,000.00 of LTD overpayments. (Appendix D). The Consent Order expressly provides that the parties agree that, notwithstanding any

other provisions of the Order to the contrary, the settlement represented and was to be construed as providing for worker's compensation benefits at the rate of $53.61 per week over the 1,912.56 week period of Mr. Layne's life expectancy. The Plan's Administrator and Judge Clemon both have drawn the clearly erroneous factual conclusion that the payments pursuant to the Worker's Compensation Consent Order were to be construed as a lump sum payment. The language of paragraph 4 of the Order clearly, unequivocally, and unambiguously provides to the contrary that the settlement represents $53.61 per week.

As previously noted, Mr. Layne successfully sought disability insurance benefits from the Social Security Administration. In reviewing the language of the LTD Plan, it is obvious that the Plan utilizes a standard of eligibility virtually identical to the Social Security Administration. Indeed, it is not disputed that Mr. Layne is totally disabled. The Social Security Administration and the Plan have both so ruled.

Both Social Security and the LTD Plan provide for a set-off for worker's compensation benefits received. Under Social Security, the compromised settlement of Mr. Layne's worker's compensation case has been construed to be at the rate of $53.61 in accordance with 42 U.S.C. 424a, 20 C.F.R. 404.408; *Sciarotta v. Bowen*, 735 F. Supp. 148 (D.N.J. 1989). The Plan and Judge Clemon should have done the same.

As previously noted, the sole issue in Mr. Layne's worker's compensation case was whether or not he was permanently totally disabled or suffering merely from a

partial disability. The former would have entitled him to $357.00 per week for the rest of his life; the latter $220.00 for not more than 300 weeks. To ignore the express, unambiguous and unequivocal provisions of paragraph 4 of the Worker's Compensation Settlement Order, will effectively discourage the lump sum settlement of worker's compensation cases where the worker also has an entitlement to LTD benefits. An injured worker, knowing that his LTD benefits will be extinguished or at least markedly reduced if he settles his worker's compensation case for a lump sum, but will not be reduced if he wins at trial, will be loathe to discuss settlement. Such would be an absurd policy, both from a public point of view, as well as a private perspective. Our judicial system with its crowded dockets certainly prefers settlements to trials. Surely the private employment relationship is enhanced by an environment that encourages or at least does not discourage amicable settlements, in lieu of contested litigation.

The primary objective of the LTD benefit provisions of the Plan is to provide covered employees and their families with basic protection against hardships created by loss of earnings due to disability. Mr. Layne's LTD insurance under the Plan was an integral element of his remuneration from JWR for the extremely strenuous and ultra hazardous work that he performed for so many years. As the Plan has already determined, Mr. Layne is, in fact, totally disabled. Mr. Layne and his family must survive on the combination of worker's compensation, Social Security and LTD benefits, for the rest of his life. The off-set of LTD benefits is not, in his case, intended to encourage rehabilitation and return to work because he

simply is physically incapable of gainful employment, either for JWR or anywhere else.

Because the payments he received as a result of the settlement are the only worker's compensation benefits Mr. Layne will receive for the remainder of his life, it is irrational, arbitrary and capricious to prorate that amount over a mere 5-year period of time. Mr. Layne and his family will have to deal with his disability for the rest of his life, which is expected to be in excess of 36 years. It is imperative to understand that the Worker's Compensation Settlement Order represents a compromised claim in which the parties opted to avoid the risks attendant to completion of the trial. The clear language of paragraph 4 of the Consent Order should be followed.

Without dispute, the Plan admitted that Layne would be entitled to LTD benefits if the express language of paragraph 4 is applied. The language of the consent order is clear, unambiguous and unequivocal and is due to be construed exactly as it is written: that Mr. Layne is receiving $53.61 per week in worker's compensation benefits for the remainder of his life expectancy. As such, Layne's LTD benefits should be restored retroactive to June of 1992.

In light of the foregoing, the Eleventh Circuit's and District Court's conclusion that Layne is ineligible for LTD benefits for a period of 60 months is ill-founded and clearly erroneous.

CONCLUSION

The inferences and conclusions drawn by the Eleventh Circuit and the District Court from the undisputed facts are illogical, irrational, capricious and unfounded. The determination that Mr. Layne is ineligible for LTD benefits for a 5-year period of time is not supported by either the undisputed facts nor the applicable law. As such, Mr. Layne respectfully requests that his Petition for Writ of Certiorari be granted.

This the 8 day of August 1994.

Respectfully submitted,

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APPENDIX A

Decision of the United States Court of Appeals for the Eleventh Circuit affirming granting of Summary Judgment in favor of Plan and denying Summary Judgment in favor of Layne.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-6812
Non-Argument Calendar

D.C. Docket No. CV92-C-2496-W

JAMES C. LAYNE,

Plaintiff-Appellant,

vs.

WALTER INDUSTRIES, INC. GROUP
BENEFIT PLAN FOR SALARIED EMPLOYEES,

Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of Alabama

(Entered May 16, 1994)

Before HATCHETT and EDMONDSON, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

APPENDIX B

Decision of United States District Court for the Northern District of Alabama granting Summary Judgment in favor of Plan and denying Summary Judgment in favor of Layne.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

JAMES C. LAYNE, Plaintiff, vs. WALTER INDUSTRIES, INC., GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES, Defendant.	)	CIVIL ACTION NUMBER *92-C-2496-W*

ORDER

(Entered Sept. 21, 1993)

Based on the accompanying Memorandum Opinion, it is ORDERED, ADJUDGED and DECREED that SUMMARY JUDGMENT is GRANTED in favor of the defendant WALTER INDUSTRIES, INC., GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES and against plaintiff JAMES C. LAYNE.

The costs of this action are hereby taxed against the plaintiff, for which execution shall issue.

DONE this 20th day of September, 1993.

/s/ U.W. Clemon
UNITED STATES
DISTRICT JUDGE
U. W. CLEMON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

JAMES C. LAYNE, Plaintiff, vs. WALTER INDUSTRIES, INC., GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES, Defendant.	)	CIVIL ACTION NUMBER *92-C-2496-W*

MEMORANDUM OPINION GRANTING SUMMARY JUDGMENT

(Entered Sept. 21, 1993)

On September 21, 1992, plaintiff James C. Layne commenced this action against defendant Walter Industries, Inc., Group Benefit Plan for Salaried Employees in the Circuit Court for Tuscaloosa County, Alabama. Pursuant to 28 U.S.C. § 1441, the defendant removed the action to this Court on October 23, 1992. The parties filed a Joint Stipulation of Facts with the Court on July 23, 1993. Pending before the Court are defendant's and plaintiff's motions for summary judgment. Upon careful consideration of the Joint Stipulation of Facts, pleadings, and other admissions on file, this Court concludes that the defendant is entitled to summary judgment.

I.

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories,

and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Both parties have moved for summary judgment. The Joint Stipulation of Facts, pleadings, and other admissions on file show no genuine issue as to any material fact. As a matter of law, judgment is GRANTED in favor of the defendant Plan and denied as to the plaintiff.

II.

The facts in this case are undisputed. The plaintiff, James C. Layne, is a disabled former underground coal miner. He was last employed as a foreman at the Jim Walter Resources, Inc. ("JWR") No. 5 Mine in Tuscaloosa County, Alabama. As a salaried employee with JWR, he was a participant in a self-funded long term disability ("LTD") plan, the defendant Walter Industries, Inc., Group Benefit Plan for Salaried Employees (the "Plan"). Joint Stipulation of Facts ¶¶ 1 & 3. The defendant Plan is an employee benefit plan covered by the Employment Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 (1990).

On April 15, 1991, the plaintiff filed suit in state circuit court against JWR seeking worker's compensation benefits for permanent total disability. On June 5, 1992, Judge Karrh of the Tuscaloosa Court entered an order in connection with a compromise settlement of the plaintiff's worker's compensation claim. Judge Karrh's Order, ¶ 4, provided as follows:

> The sums paid and forgiven hereunder as compensation benefits, after reduction of attorney's fees and the expenses incurred, leaves a balance of $102,535.40. The sums to be paid under this settlement shall be paid without commutation [or] interest and shall represent the compromise agreement that the employee's life expectancy is 1,912.56 weeks forward from May 27, 1992, pursuant to the mortality tables accepted by the Superintendent of Insurance . . . .Thus, the settlement herein reached represents the payment of, to-wit: $53.61 per week over the 1,912.56 week period of life expectancy of the Plaintiff.

Joint Stipulation of Facts ¶ 9; Compl. Ex. 1 ¶ 4. The parties have stipulated that Judge Karrh's Order entitled the plaintiff to worker's compensation benefits in a lump sum. Joint Stipulation of Facts ¶ 12.

The plaintiff receives monthly disability benefits from the Social Security Administration. The Plan provides that amounts received for Social Security disability and worker's compensation are a set-off against monthly LTD benefits under the Plan. Joint Stipulation of Facts ¶ 4. Plaintiff claims that he is entitled to LTD benefits from June 1992 to May 1997. He argues that the express provisions of Judge Karrh's Order should be applied for purposes of computing his LTD benefits, e.g., $53.61 per week.

The defendant Plan denies that the plaintiff is entitled to LTD benefits from June 1992 to May 1997. The Plan argues that the lump sum payment pursuant to Judge Karrh's Order, *see* Compl. Ex. 1, together with the terms of the Plan, require this result. *See* Armbrester Aff. Ex. A,

Part B at 5-12. Thus, the defendant claims under the provisions of the Plan, the plaintiff is ineligible for LTD benefits for sixty months as was determined by the Claims Administrator on July 20, 1992. *See* Compl. Ex. 2.

III.

The actions of the defendant Plan are subject to *de novo* review by this Court. "The denial of benefits challenged under [29 U.S.C.] § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire and Rubber Co. v. Bruch,* 489 U.S. 101, 115 (1989). The *de novo* standard of review applies regardless of whether the plan in question is funded or unfunded. *Id.*

As the parties have stipulated, Judge Karrh's Order entitled plaintiff to worker's compensation benefit payments in a lump sum. Joint Stipulation of Facts ¶ 12; Compl. Ex. 1 ¶ 4. Because the plaintiff received a lump sum worker's compensation claim settlement, the Plan requires the lump sum amount to be broken down over a sixty month period and plaintiff's monthly disability to be reduced for sixty months. *See* Armbrester Aff. Ex. A, Part B at 5-12. Because of the proration of this lump sum, the claims Administrator determined that LTD benefits would not be due to the plaintiff until sixty months after the date of Judge Karrh's Order. *See* Compl. Ex. 2 at 2. The Claims Administrator correctly followed the terms of the Plan.

Because the Claims Administrator's decision was in accordance with Judge Karrh's Order and the terms of the Plan, summary judgment is hereby **GRANTED** in favor of the defendant.

DONE this 20th day of September, 1993.

/s/ U.W. Clemon
UNITED STATES
DISTRICT JUDGE
U. W. CLEMON

APPENDIX C

Joint Stipulation of Facts before United States District Court for the Northern District of Alabama.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

JAMES C. LAYNE, Plaintiff, v. WALTER INDUSTRIES, INC., GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES, Defendant.	)	CIVIL ACTION NO. CV-92-C-2496-W

JOINT STIPULATION OF FACTS

Plaintiff and defendant hereby stipulate to the following, for purposes of this action only:

1. Plaintiff is a disabled former underground coal miner who was last employed as a foreman for Jim Walter Resources, Inc. at its No. 5 Mine in Tuscaloosa County, Alabama. As a salaried employee of Jim Walter Resources, Inc. plaintiff was afforded certain employee benefits, including long term disability benefits that were administered by Walter Industries, Inc.

2. Plaintiff's former employer, Jim Walter Resources, Inc., (hereinafter referred to as JWR), is an affiliate of Walter Industries, Inc.

3. During plaintiff's employment with JWR, plaintiff was a participant in a self-funded long term disability plan, the defendant Walter Industries, Inc. Group Benefit Plan for Salaried Employees (the "Plan"). A copy of that Plan is attached as Exhibit A to the Affidavit of Rodger F. Armbrester which was filed with the Court on October 23, 1992, contemporaneously with the removal of this action to this Court.

4. For a considerable period of time prior to June 5, 1992, the defendant Plan paid plaintiff long term disability benefits on a monthly basis. Plaintiff also receives an amount monthly from the Social Security Administration for disability benefits. The Plan provides, *inter alia*, that amounts received for Social Security disability and worker's compensation are a set-off against monthly LTD entitlements under the Plan.

5. The defendant Plan is an employee benefit plan covered by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*

6. Pursuant to ERISA, plaintiff seeks in this action to recover benefits allegedly due him under the terms of the defendant Plan; seeks to enforce his claimed rights under the Plan; and seeks to clarify his rights to future benefits under the Plan.

7. Plaintiff was awarded disability benefits due to his back condition by Social Security Administration Administrative Law Judge Sarah Hamilton on May 6, 1991.

8. Plaintiff filed suit against JWR on April 15, 1991, seeking worker's compensation benefits for permanent

total disability for the remainder of his life, pursuant to Section 25-5-57(a)(4) Code of Alabama (1975). In that suit, plaintiff claimed benefits for a September 27, 1989 on-the-job back injury.

9. Testimony was taken on May 26 and 27, 1992, in plaintiff's worker's compensation case against JWR in the Circuit Court for Tuscaloosa County, Alabama, Civil Action No. CV-91-450. After two days of testimony, plaintiff and JWR reached a compromise settlement concerning all future worker's compensation benefits for the plaintiff for the remainder of his life. The parties agreed that the plaintiff had a life expectancy of 36.78 years. Exhibit 1 to the complaint is Circuit Judge John M. Karrh's June 5, 1992 Order entered in connection with the compromise settlement of plaintiff's worker's compensation claim. Counsel for both parties to the worker's compensation case signed the order indicating their assent to the language of the Order. Judge Karrh's Order provided, *inter alia*, as follows:

> The sums paid and forgiven hereunder as compensation benefits, after reduction of attorney's fees and the expenses incurred, leaves a balance of $102,535.40. The sums to be paid under this settlement shall be paid without commutation [or] interest and shall represent the compromise agreement that the employee's life expectancy is 1,912.56 weeks forward from May 27, 1992, pursuant to the mortality tables accepted by the Superintendent of Insurance and published by the Secretary of State in the bound volume of the Acts of Alabama, pursuant to Section 35-16-3 Code of Alabama (1975), which such tables were published at page 1586

> and 1587 of the Acts of Alabama, Regular Session – 1990. Thus, the settlement herein reached represents the payment of, to-wit: $53.61 per week over the 1,912.56 week period of life expectancy of the plaintiff.

10. Plaintiff was represented in his worker's compensation lawsuit by his counsel in this action. JWR was represented in the worker's compensation lawsuit by two lawyers from one of the law firms representing the defendant herein, William J. Donald, Jr. and Herschel T. Hamner. Mr. Donald signed the Notice of Removal and Answer in the instant action.

11. On July 20, 1992, the Claims Administrator for the Plan wrote plaintiff's counsel advising that the Claims Administrator would "prorate the amount of the [worker's compensation] settlement over a sixty month period." As such, the Claims Administrator stated, *inter alia,* that "No [LTD] benefits will be due [the plaintiff] until sixty months after the date of Judge Karrh's order." A copy of the Claims Administrator's July 20, 1992 letter is Exhibit 2 of the complaint.

12. Plaintiff's monthly Social Security disability benefits, plus the lump sum amount payable for disability pursuant to Judge Karrh's June 5, 1992, Order divided by 60 months, exceeds plaintiff's Scheduled Monthly LTD Benefits under the defendant Plan. Plaintiff's monthly Social Security disability benefits, plus $232.31 ($53.61 per week converted to a monthly amount), does not exceed plaintiff's Scheduled Monthly LTD Benefit under the defendant Plan.

13. By letter of July 30, 1992, a copy of which is attached to the complaint as Exhibit 3, plaintiff's counsel sought review by the Plan Administrator of the Claims Administrator's decision. That letter also sought copies of the Plan and other Plan documents.

14. By letter of August 11, 1992, to plaintiff's counsel, a copy of which is attached as Exhibit 4 to the complaint, Walter Industries, Inc.'s Vice President of Employee Relations, G. W. Hermann, provided the Plan documents sought and informed plaintiff's counsel that the Plan considered the Claims Administrator to have properly interpreted the applicable Plan language.

15. Plaintiff initiated the instant action in the Circuit Court for Tuscaloosa County, Alabama, Case No. CV-92-1164 on September 21, 1992. Circuit Judge Karrh set the plaintiff's request for a preliminary injunction for hearing on October 28, 1992. Defendant filed its Notice of Removal and accompanying documents on October 23, 1992.

/s/ Gary L. Blume
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APPENDIX D

Consent Order entered in worker's compensation case in Alabama State Court.

JAMES CURTIS LAYNE, Plaintiff,	*	IN THE CIRCUIT COURT
	*	FOR TUSCALOOSA
vs.	*	COUNTY, ALABAMA
JIM WALTER RESOURCES, INC., Defendant.	*	Civil Action No. CV-91-450

ORDER

(Entered June 5, 1992)

This cause came before the Court set for trial on the 26th day of May, 1992. At that time the parties appeared, together with their counsel of record, and testimony was taken on the 26th and 27th of May, 1992. During the late afternoon of the 27th, the parties appeared in open court and advised the Court that they had reached the settlement of this disputed and contested claim. The Court is of the opinion that the settlement of the parties is due to be adopted and ratified by the Court.

The parties have stipulated that the sole issue in dispute in this action is the degree of permanent disability of the Plaintiff. The Plaintiff contends that he is totally permanently disabled. The Defendant contends that the [Plaintiff] is partially permanently disabled.

Pursuant to the settlement of this disputed and contested claim by the parties, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. That the Defendant shall pay the Plaintiff through his counsel of record the sum of $110,000.00 in two installments as follows: (i) $55,000.00 to be paid within 30 days of May 27, 1992; (ii) $55,000.00 to be paid within 13 months of May 27, 1992.

2. The Defendant shall take all steps necessary to forgive and release the Plaintiff from the Plaintiff's balance outstanding and owing to Defendant's Long-Term Disability Insurance carrier as of May 27, 1992. The parties have agreed that the approximate amount of such indebtedness is $12,000.00 to $13,000.00. Any payments received by Defendant's carrier after May 27, 1992, shall be refunded to Plaintiff.

3. The sums paid hereunder shall release Defendant from any and all further obligations to the Plaintiff for worker's compensation benefits of any type (including vocation rehabilitation); provided, however, that the Defendant shall pay the amount of any unpaid reasonable and necessary medical, surgical or hospital expenses which are due in accordance with the Worker's Compensation Act of Alabama as a result of the accident and injury made the basis of this action, and the Defendant shall also pay for any reasonable and necessary medical, surgical or hospital expenses that are incurred by Plaintiff in the future as a result of the accident and injury made the basis of this action under the terms of the Worker's Compensation Act of Alabama.

4. The sums paid and forgiven hereunder as compensation benefits, after reduction of attorney's fees and the expenses incurred, leaves a balance of $102,535.40. The sums to be paid under this settlement shall be paid

without commutation [or] interest and shall represent the compromise agreement that the employee's life expectancy is 1,912.56 weeks forward from May 27, 1992, pursuant to the mortality tables accepted by the Superintendent of Insurance and published by the Secretary of State in the bound volume of the Acts of Alabama, pursuant to Section 35-16-3 Code of Alabama (1975), which such tables were published at pages 1586 and 1587 of the Acts of Alabama, Regular Session – 1990. Thus, the settlement herein reached represents the payment of, to-wit: $53.61 per week over the 1,912.56 week period of life expectancy of the Plaintiff.

5. The costs of this action shall be taxed against the Defendant.

So ORDERED, ADJUDGED AND DECREED on this the 5th day of June , 1992.

/s/ John M. Karrh
John M. Karrh
Circuit Judge

Approved as to form:

/s/ Gary L. Blume
Gary L. Blume
Attorney for Plaintiff

/s/ Herschel T. Hamner, Jr.
Herschel T. Hamner, Jr.
Attorney for Defendant